Supreme Court, U.S.
FILED
OCT 1 2003
OFFICE OF THE CLERK

No. 03-225

In The

Supreme Court of the United States

MARK WOOD,

Petitioner,

v.

CHARLIE GREEN, CLERK OF THE CIRCUIT COURT FOR LEE COUNTY, FLORIDA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HALA A. SANDRIDGE, ESQUIRE
FOWLER WHITE BOGGS BANKER, P.A.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

As the body of this brief makes clear, this Court should deny Petitioner Mark Wood's petition for writ of certiorari as to all questions presented in the petition. In addition, and in accordance with Supreme Court Rule 15.2, Respondent Charlie Green, Clerk of the Circuit Court for Lee County, Florida, raises the following objections to the questions presented:

1. The first question presented in the petition does not accurately reflect the Eleventh Circuit's holding on this issue, and the second and third questions are subsumed within the first. If this Court grants the petition as to any or all of these questions, Respondent submits the following as a more accurately phrased question:

> THE ELEVENTH CIRCUIT CORRECTLY HELD THAT, ON THE FACTS OF THIS CASE, NO REASONABLE JURY COULD FIND THAT WOOD WAS A QUALIFIED INDIVIDUAL WITHIN THE MEANING OF THE ADA BECAUSE AN ACCOMMODATION IS UNREASONABLE IF IT DOES NOT ALLOW SOMEONE TO PERFORM HIS OR HER JOB DUTIES IN THE PRESENT OR IN THE IMMEDIATE FUTURE.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	ii
RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	4
A. THE ELEVENTH CIRCUIT CORRECTLY HELD THAT, ON THE FACTS OF THIS CASE, NO REASONABLE JURY COULD FIND THAT WOOD WAS A QUALIFIED INDIVIDUAL WITHIN THE MEANING OF THE ADA BECAUSE AN ACCOMMODATION IS UNREASONABLE IF IT DOES NOT ALLOW SOMEONE TO PERFORM HIS OR HER JOB DUTIES IN THE PRESENT OR IN THE IMMEDIATE FUTURE	4
CONCLUSION	15

TABLE OF AUTHORITIES

Page

DECISIONAL AUTHORITY

Cehrs v. Northeast Ohio Alzheimers Research Center, 155 F. 3d 775 (6th Cir. 1998) 12

Duckett v. Dunlop Tire Corp., 120 F. 3d 1222 (11th Cir. 1997) 5, 6, 8, 9

Garcia-Ayala v. Lederie Parenterals, Inc., 212 F. 3d 638 (1st Cir. 2000) ..... *passim*

Hilburn v. Murata Electrics N. America, Inc., 181 F. 3d 1220 (11th Cir. 1999) 5

Hudson v. MCI Telcoms. Corp., 87 F. 3d 1167 (10th Cir. 1996) 13

Humphrey v. Memorial Hospital Association, 239 F. 3d 1129 (9th Cir. 2001) 11, 12

Kimbro v. Atlantic Richfield Co., 889 F. 2d 869 (9th Cir. 1989) 10, 11

Reed v. Heil Co., 206 F. 3d 1055 (11th Cir. 2000) 5

School Board of Nassau County v. Arline, 480 U.S. 273 (1987) 13

Walsh v. United Parcel Service, 201 F. 3d 718 (6th Cir. 2000) 12, 13

Wood v. Green, 323 F. 3d 1309 (11th Cir. 2003) ..... *passim*

OTHER AUTHORITY

42 U.S.C. §§ 12101 et seq 3

42 U.S.C. § 12111(8) 6

42 U.S.C. § 12111(9) 14

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. § 12112 4

42 U.S.C. § 12112(a)..... 4

29 C.F.R. pt. 32, app. A(b).....14

29 C.F.R. pt. 1630, app.....14

45 C.F.R. § 1232.3(i)..... 6

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, requests that this Court deny the petition for writ of certiorari seeking review of the opinion entered by the United States Court of Appeals for the Eleventh Circuit in this case on March 13, 2003.

STATEMENT OF THE CASE

Charlie Green, Clerk of the Circuit Court for Lee County, Florida cannot accept the "Statement" submitted by Petitioner, Mark Wood, because it contains many facts irrelevant to proper disposition of Wood's petition and incorporates argument in support of Wood's position. Green submits the following, taken verbatim from the Eleventh Circuit's opinion:

A. Facts

Appellee Mark Wood ("Wood") began working for the Clerk's Office of the Circuit Court for Lee County, Florida, in 1974. In 1978, Wood began suffering from cluster headaches. By 1985, Wood's cluster headaches caused him to miss lengthy periods of work and prevented him from accomplishing a substantial portion of his duties. To accommodate Wood's extended absences resulting from the cluster headaches, the Clerk's Office created the new position of Court Coordinator for Wood. Wood's primary duty in his new position was to review new legislation and rules that affected the courts and to establish procedures accordingly. This duty occupied approximately 50% of his time. The remaining 50% of his time was spent working

with the supervisors of the court, acting as a sounding board, monitoring court related financial accounts, representing the office on boards and committees, speaking at conferences, handling difficult customers, and disseminating information to the public. When Wood was absent, other people had to do his work, sometimes including the review and analysis of new legislation. Notwithstanding his health problems, however, Wood received favorable yearly evaluations.

Throughout the years, Green, who was Clerk of the Circuit Court for Lee County, Florida, routinely granted Wood discretionary leave when he had exhausted his medical, sick, and vacation leave. In 1995, Wood missed a total of seven weeks of work. He missed significant amounts of work in both 1996 and 1997 as well. In 1998, Wood missed a total of approximately 15 weeks of work due to his cluster headaches. In 1999, Wood's cluster headaches caused him to miss considerable portions of work in January, February, March, July, and August. In the fall of 1999, Wood met with his direct supervisor, Ed Flannery ("Flannery"), for his annual evaluation. Flannery informed Wood that he would not receive the customary annual pay increase due to his absences from work. Flannery also told Wood that Wood might have to submit weekly doctor's notes if Wood missed additional work.

Shortly thereafter, Wood began experiencing another cluster headache. He requested a discretionary leave of absence without pay until he could return to work. Green approved this leave effective December 2, 1999, with no termination date. Wood subsequently telephoned Green to check in and tell him that he was still suffering from a cluster headache. Green told him not to worry about his job and to take care of himself. Additionally, Green told

Wood to provide him with a doctor's letter as soon as he could. Wood's doctor sent a letter to Green in late December 1999. On January 5, 2000, Green terminated Wood's employment.

B. Procedural History

Wood brought an Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. ("ADA") and a Family Medical Leave Act ("FMLA") action against Green. After an eight-day jury trial, the jury returned a verdict in favor of Wood on his ADA discrimination claim and in favor of Green on the FMLA claim. On the ADA claim, the jury awarded Wood back pay. The district court also ordered reinstatement, but stayed such reinstatement pending appeal. Green filed a motion for judgment as a matter of law pursuant to Rule 50(b) of the Federal Rules of Civil Procedure. The district court denied Green's Rule 50(b) motion, finding that Wood's requested accommodation for discretionary leave was not unreasonable because it was not for indefinite leave. Rather, Wood's fourteen-year history with cluster headaches, which indicated that he would be able to return to work in a month or two, circumscribed Wood's request. In considering the testimony in the light most favorable to Wood, the district court also found that sufficient evidence existed to support the jury's finding that a reasonable accommodation would have enabled Wood to perform the essential functions of his job.

Green then perfected this appeal.

Wood v. Green, 323 F. 3d 1309 (11th Cir. 2003).

As it relates to Wood's petition, the Eleventh Circuit's opinion held that Wood was not a qualified individual

within the meaning of the ADA because an accommodation is unreasonable if it does not allow someone to perform his or her job duties in the present or in the immediate future. *See Id.* at 1314.

REASONS FOR DENYING THE WRIT

A. THE ELEVENTH CIRCUIT CORRECTLY HELD THAT, ON THE FACTS OF THIS CASE, NO REASONABLE JURY COULD FIND THAT WOOD WAS A QUALIFIED INDIVIDUAL WITHIN THE MEANING OF THE ADA BECAUSE AN ACCOMMODATION IS UNREASONABLE IF IT DOES NOT ALLOW SOMEONE TO PERFORM HIS OR HER JOB DUTIES IN THE PRESENT OR IN THE IMMEDIATE FUTURE.

Wood argued he was entitled to recover under the Americans With Disabilities Act, 42 U.S.C. § 12112 (ADA). The ADA provides:

> [n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112(a) (1999). A plaintiff advancing a claim of employment discrimination under the ADA must make a prima facie case establishing that:

BEST AVAILABLE COPY

(1) he has a disability;

(2) he is a "qualified individual," able to perform the essential functions of the employment position that he holds or seeks with or without reasonable accommodation; and

(3) the defendant unlawfully discriminated against him because of the disability.

See Reed v. Heil Co., 206 F. 3d 1055 (11th Cir. 2000), citing *Hilburn v. Murata Elecs. N. Am., Inc.*, 181 F. 3d 1220, 1226 (11th Cir. 1999).

The Eleventh Circuit held that, on the facts of this record, Wood failed to satisfy the second prong. *Wood*, 323 F. 3d at 1312, 1314. To reach this conclusion, the court relied upon its holding in *Duckett v. Dunlop Tire Corp.*, 120 F. 3d 1222 (11th Cir. 1997) (per curiam), in which it held that an employer was not required to allow an employee to stay on medical leave under a salary continuation program. *Wood*, 323 F. 3d at 1313 (citing *Duckett*, 120 F. 3d at 1225). The court specifically referenced *Duckett*'s language that the employee's

> need for leave would have been for an indefinite period – not just a month or two. Put differently, plaintiff could not represent that he likely would have been able to work within a month or two . . . and had no way of knowing when his doctor would allow him to return to work in any capacity.

Wood, 323 F. 3d at 1313 (citing *Duckett*, 120 F. 3d at 1226). The court then noted *Duckett*'s policy analysis that the ADA was intended to help an individual ***perform*** the job with reasonable accommodations:

> Significantly, these provisions [42 U.S.C. § 12111(8); 45 C.F.R. § 1232.3(i)] contain no reference to a person's future ability to perform the essential functions of his position. To the contrary, they are formulated entirely in the present tense, framing the precise issue as to whether an individual "can" (not "will be able to") perform the job with reasonable accommodations. Nothing in the text of the reasonable accommodation provision requires an employer to wait for an indefinite period for an accommodation to achieve its intended effect. Rather, reasonable accommodation is by its terms most logically construed as that which, presently, or in the immediate future, enables the employee to perform the essential functions of the job in question. *Wood*, 323 F. 3d at 1313 (citing *Duckett*, 120 F. 3d at 1226).
>
> . . .
>
> While *Duckett* dealt with indefinite leave, the holding of that case is that an accommodation is unreasonable if it does not allow someone to perform his or her job duties in the present or in the immediate future.

Wood, 323 F. 3d at 1314 (citing *Duckett*, 120 F. 3d at 1227). Following its *Duckett* logic, the court held that Wood did not prove the accommodation he requested was intended to help him perform his essential job functions:

> While a leave of absence might be a reasonable accommodation in some cases, Wood was requesting an indefinite leave of absence. Wood might return to work within a month or two, or he could be stricken with another cluster headache soon after his return and require another indefinite leave of absence. ***Wood was not requesting an accommodation that allowed***

> ***him to continue work in the present, but rather, in the future – at some indefinite time.***

Wood, 323 F. 3d at 1314 (emphasis added).

Wood has now petitioned this Court to exercise its discretionary jurisdiction to resolve a purported conflict between the Eleventh Circuit's rule of law and that of other circuit courts of appeals. Supreme Court Rule 10 explains that a Petition for Writ of Certiorari will be granted only for compelling reasons, which includes conflicts between the courts of appeals on the same important matter. As will be shown, the Eleventh Circuit's holding is consistent with other circuit courts of appeals.

Wood first argues the Eleventh Circuit's holding conflicts with *Garcia-Ayala v. Lederie Parenterals, Inc.*, 212 F. 3d 638 (1st Cir. 2000). Although the Eleventh Circuit questioned some of the *Garcia-Ayala* analysis, the court eventually distinguished *Garcia-Ayala* because "unlike Wood, the plaintiff in *Garcia-Ayala* had requested leave to a specific date." *Wood*, 323 F. 3d at 1314.

In *Garcia-Ayala*, plaintiff had been stricken with breast cancer and undergone several rounds of surgery and chemotherapy. After her surgery, plaintiff saw a television report on a bone marrow transplant procedure that offered a treatment for her cancer. Plaintiff informed her employer that she needed to undergo this procedure, which was only available at a Chicago hospital. On April 9, 1996, the doctors who were to perform this procedure certified to her employer that plaintiff would be able to return to work on July 30, 1996. Plaintiff was terminated on June 10, 1996. *Garcia-Ayala*, 212 F. 3d at 642. In rejecting the district

court's finding that plaintiff's requested accommodation was unreasonable, the First Circuit stated:

> Similarly, the court viewed Garcia's requested accommodation – additional leave time with a specific date for return – as a request that her job be held open indefinitely. Lederle had argued that since Garcia's doctor could not give absolute assurances that she would be fit to return to work on July 30th, the request was per se for an indefinite leave and so was unreasonable. ***Garcia specified, however, when she would return, and her doctor released her for return several weeks thereafter.***

Id. at 648 (emphasis added). For ***this*** reason, the First Circuit dismissed the district court's finding that the *Garcia-Ayala* plaintiff requested an indefinite leave of absence. At bottom, then, the First Circuit addressed different facts, which required a different legal analysis and resulted in a different rule of law.

Even if the First Circuit had confronted the *Wood* facts, the First and Eleventh Circuits would likely agree on the outcome. In *Garcia-Ayala*, the First Circuit confirmed that certain leaves, indefinite or otherwise, could be an unreasonable accommodation:

> Of course, that a leave is not indefinite does not make it reasonable. Even short leaves may inflict undue hardship in a given employment situation, ***and there may be requested leaves so lengthy or open-ended as to be an unreasonable accommodation in any situation.***

Id. (emphasis added). Indeed, the First Circuit cited *Duckett* with approval. *Id.* at 650 ("Other factors to be considered as to whether requests for leaves of absence are

unreasonable include . . . where an employee gave no indication as to when she might be able to return to work . . . "). Thus, *Garcia-Ayala* did not, as Wood implies, hold that an indefinite leave of absence was, *per se,* a ***reasonable*** accommodation. Nor did the Eleventh Circuit hold in *Wood* that an indefinite leave of absence was, *per se,* an ***unreasonable*** accommodation. Both the Eleventh and First Circuits recognized different facts beget different results. *Compare Wood*, 323 F. 3d at 1314 (citing *Duckett*, 120 F. 3d at 1314) ("more compelling facts might lead to a different result") *with Garcia-Ayala*, 212 F. 3d at 650 ("We add that our analysis, while applicable to these facts, may not be applicable in other cases.").

The factual differences between *Garcia-Ayala* and *Wood* explain the seemingly different outcomes. The First Circuit faced an employee who needed a leave of absence to receive medical treatment to cure her cancer and return her to work on a permanent basis. Wood, conversely, did not suffer from an illness for which he sought medical treatment to return him to work on a permanent basis. Wood's disability resulted in continuous absences. To address Wood's continuous absences, the Clerk provided Wood's first accommodation, a new job with new duties. Even with this accommodation, however, Wood could not perform his essential job functions. So, the Eleventh Circuit focused on whether the second accommodation Wood requested allowed him to work in the present or near future. Wood's second requested accommodation – indefinite leaves of absence whenever and as long as he needed them – was not intended to cure Wood, or to permit him to work.

In effect, Wood requested an accommodation to ***not work*** when and as long as he suffered from a bout of

cluster headaches. As the Eleventh Circuit noted, the ADA speaks in terms of future tense. Wood's requested accommodation would have only allowed him to work some time in the future. Here, the Eleventh Circuit, examining the undisputed facts of this case, found Wood only proved that:

> [he] might return to work within a month or two, or he could be stricken with another cluster headache soon after his return and require another indefinite leave of absence. ***Wood was not requesting an accommodation that allowed him to continue work in the present, but rather, in the future – at some indefinite time.***

Wood, 323 F. 3d at 1314 (emphasis added). Because *Garcia-Ayala* addresses dramatically different facts, the First and Eleventh Circuits' decisions do not conflict.

Likewise, Wood cites other cases that are factually distinguishable. For instance, in *Kimbro v. Atlantic Richfield Co.*, 889 F. 2d 869 (9th Cir. 1989), plaintiff sued under Washington's handicap discrimination law, consequently the Ninth Circuit did not address whether an indefinite leave of absence was a reasonable accommodation under the ADA. Even if applicable, the Ninth Circuit noted:

> ***This is not to say that [the employer] would necessarily have been obligated to grant a second leave if the migraine condition recurred after return from the initial leave.*** Indeed, the fact that an accommodation has been attempted and was unsuccessful is a relevant consideration for the factfinder and may in fact prove dispositive in determining whether failure to permit subsequent leave constituted failure to make a reasonable accommodation.

Id. at 879, n.10. (emphasis added). Here, the Clerk initially accommodated Wood with a new job position. When Wood could not perform his essential job functions with this first accommodation, the Clerk provided Wood with a second accommodation, a leave of absence. In short, multiple leaves of absences had been attempted and were unsuccessful in allowing Wood to perform his essential job functions. Under *Kimbro*'s own analysis, the Eleventh Circuit correctly found these facts dispositive in determining whether failure to permit a subsequent leave constituted failure to make a reasonable accommodation.

Humphrey v. Memorial Hospital Association, 239 F. 3d 1128 (9th Cir. 2001), also fails to support Wood's conflict argument. There, plaintiff suffered from an obsessive-compulsive disorder that caused her to be excessively late or unable to attend work. After her employer terminated her, plaintiff brought suit under the ADA, alleging that her employer failed to provide her with a reasonable accommodation. The evidence showed that her doctor stated in a letter that plaintiff's condition was treatable and that "she may have to take some time off until we can get the symptoms better under control." *Id.* at 1130-1131. The court held that this evidence was sufficient to satisfy the minimal requirement that a leave of absence could plausibly have enabled plaintiff adequately to perform her job and reversed a summary judgment and remanded to the trier-of-fact. *See Id.* at 1140.

Humphrey does not conflict with *Wood*. The *Humphrey* court noted that different facts may lead to a different result:

> Of course, the requirement to grant a leave where there are plausible reasons to believe that it would accommodate the employee's disability

> can not [sic] be repeatedly invoked, thus permitting an unqualified employee to avoid termination by requesting a leave of absence each time he is about to be fired. As we noted in *Kimbro*, ***the fact that a prior leave was granted and was unsuccessful may be a relevant consideration in determining whether additional leave would be a reasonable accommodation.***

Id. at 1136 n.13 (emphasis added). Given this language, if the *Humphrey* court had confronted facts similar to *Wood*, the result would have been likely identical.

Wood cites *Cehrs v. Northeast Ohio Alzheimers Research Center*, 155 F. 3d 775 (6th Cir. 1998), to bolster his conflict argument. In *Cehrs,* the plaintiff's physician had determined and estimated that the plaintiff could return to work on a part-time basis by a date certain:

> [T]he *Cehrs* Court was confronted with a situation where a request for a ***definite*** and relatively short leave was made, accompanied by a reasonable prospect of recovery.

Walsh v. United Parcel Service, 201 F. 3d 718, 726 (6th Cir. 2000) (explaining *Cehrs*). Like the other cases, *Cehrs* does not conflict with *Wood*. *Cehrs* involved an employee who requested leave to a date certain to receive medical treatment that would then enable her to perform her job.

Wood argues the Eleventh Circuit's decision creates additional conflict because the court took the reasonableness issue away from the jury. Yet the Eleventh Circuit did not hold, as a matter of law, that ***any*** request for an indefinite leave of absence was an unreasonable accommodation. As the court noted, in some situations a leave of

absence might be a reasonable accommodation. *See Wood*, 323 F. 3d at 1314. Rather, the Eleventh Circuit implicitly recognized that in some circumstances the reasonableness of an accommodation can be decided as a matter of law. Other circuit courts of appeals are in accord. *Garcia-Ayala*, 212 F. 3d at 650 (awarding judgment as a matter of law); *Walsh*, 201 F. 3d at 726-727 ("We therefore hold that when, as here, an employer has already provided a substantial leave, an additional leave period of a significant duration, with no clear prospects for recovery, is an objectively unreasonable accommodation."); *Hudson v. MCI Telcoms. Corp.*, 87 F. 3d 1167, 1169 (10th Cir. 1996) (affirming summary judgment because plaintiff "has failed to present evidence from which a reasonable jury could find that the accommodation she urges, unpaid leave of indefinite duration, was reasonable.").

The need for individualized assessment of an ADA case, as required by *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 (1987), does not preclude disposition as a matter of law. The Eleventh Circuit complied with *Arline*, and closely analyzed the individual circumstances of this case. The court noted that the Clerk employed Wood for over 25 years. During that time period, he provided Wood with the first accommodation by creating a new position especially tailored to accommodate Wood's cluster headaches. Even with this accommodation, however, Wood could not perform his essential job functions, so the Clerk provided Wood with years of discretionary leaves of absence. Given these particular facts, the Eleventh Circuit found no reasonable jury could ever find that the Clerk denied Wood a reasonable accommodation.

This conclusion is consistent with the express language and spirit of the ADA. An accommodation as

contemplated by the ADA is a measure that enables the performance of a job by a person who, without the measure, is disabled from performing the job. *See* 42 U.S.C. § 12111(9). It effectively transforms a disabled person into an enabled person for the purposes of the job. *Garcia-Ayala*, 212 F. 3d at 652 (O'Toole, District Judge, dissenting).

To be an accommodation, the requested leave would have to do what an accommodation under the ADA must do – enable the employee to perform the essential functions of his job. *See Id.* For a proposed period of leave to constitute an effective accommodation, it must be instrumental to effect or advance a change in the employee's disabled status with respect to the job, so that the employee is enabled to do it. *See Id.* at 655. A period of leave would meet this criterion if it permitted the employee to receive therapy or treatment that would succeed in removing the obstacle to employment the particular disability posed. *See Id.* "An EEOC interpretive guideline suggests that leave 'for necessary treatment' could be a reasonable accommodation, 29 C.F.R. pt. 1630, app., and the Department of Labor advises that leave might be a reasonable accommodation 'when the disability is of a nature that it is likely to respond to treatment.' 29 C.F.R. pt. 32, app. A(b)." *See Id.*

No reasonable jury could find that Wood's requested leave could legitimately be an accommodation enabling him, more or less contemporaneously, to perform the essential functions of the job. Rather, the requested accommodation countenanced Wood working when he could, and staying at home when he could not. As of December 1999, he was not able to work. "The requested leave would not have changed that. It would not have made [Wood] able to work when he was unable, and when

he was able again, it was unnecessary. In point of fact, it would have had no effect on [Wood's] actual ability to work." *See Id.*

As the dissenting judge noted in *Garcia-Ayala*:

> There is hazard in trying to speak too broadly or too categorically, especially in this area where the varieties of potential accommodations, and the reasons why any given accommodation might or might not be reasonable, are myriad. ***Still, there will be cases in which a court may appropriately take the question away from the trier of fact and decide it as a matter of law.***

Id. at 652-653 (emphasis added). The need for individualized assessment of an ADA case does not preclude a disposition as a matter of law. The Eleventh Circuit recognized as much and its decision does not conflict with any other circuit court of appeals, much less the public policies underpinning the ADA.

CONCLUSION

For the foregoing reasons, Respondent, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, asks that this Court deny the petition for writ of certiorari.

Respectfully submitted,

HALA A. SANDRIDGE, ESQUIRE
FOWLER WHITE BOGGS BANKER, P.A.
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411

Counsel for Respondent